

In the Matter of)
)
Revision of the Commission's) CC Docket No. 94-102
Rules to Ensure Compatibility)
with Enhanced 911 Emergency)
Calling Systems)
)
Petition for Limited Waiver)

**PETITION FOR LIMITED WAIVER OF
SECTION 20.18(C) OF THE COMMISSION'S RULES**

1 Section 20.18(c) of the Rules states that "[l]icensees subject to this section must be capable of transmitting 911 calls from individuals with speech or hearing disabilities through means other than mobile radio handsets, e.g., through the use of Text Telephone Devices (TTY)." The accompanying note to this Rule section specifies that "[o]perators of digital wireless systems must begin complying with the provisions of this paragraph on or before June 30, 2002."

hereof, the following is shown:

I) Relief Requested

1. The Petitioners request a limited waiver and a six-month extension of time, up to and including December 30, 2002, within which to comply with the requirements of Section 20.18(c) of the Rules.

II) Background

2. SLO is the licensee of Cellular Radiotelephone Service Station KNKQ332, the Frequency Block A cellular system serving the California 5 - San Luis Obispo RSA. During calendar year 2001, SLO installed its own switch, an Ericsson MSC 5000. The switch has Time Division Multiple Access ("TDMA") digital capability. Prior to installation of the Ericsson MSC 5000 switch, switching functions for SLO's system were performed by AT&T Wireless Services, Inc.'s ("AT&T's") Santa Barbara - Santa Maria - Lompoc, California MSA Frequency Block A cellular system. Upon installation of its own switch, SLO terminated its switch-sharing arrangement with AT&T.

3. EU, a commonly-controlled affiliate of SLO, is the licensee of Broadband Personal Communications Service Stations KNLF915 (Frequency Block D, BTA No. 397, Salinas - Monterey, California BTA), KNLG742 (Frequency Block D, BTA No. 405, San Luis Obispo, California BTA), KNLG743 (Frequency Block F, BTA No. 405, San Luis Obispo, California BTA), KNLG744 (Frequency Block D, BTA No. 406, Santa Barbara - Santa Maria, California BTA), WPOK945 (Frequency Block C, BTA No. 28, Bakersfield, California BTA) and

WPOK946 (Frequency Block C, BTA No. 458, Visalia - Porterville - Hanford, California BTA). Of these six stations, Rule 24.203(c) five-year construction benchmark showings have been filed for four (i.e., Stations KNLF915, KNLG742, KNLG743 and KNLG744). Switching functions for EU's systems are performed by SLO's Ericsson MSC 5000 switch which, as noted above, has TDMA digital capability.

4. As noted in their previous quarterly report filings in this docket, the Petitioners are small carriers licensed to serve comparatively small markets. As small carriers, the Petitioners lack any influence over the research and development activities of equipment manufacturers, and will rely upon the equipment manufacturers to install (on a turnkey basis) the equipment necessary to allow the systems to process 911 calls originating from TTY devices. The Petitioners previous quarterly report filings stated that the necessary equipment would be obtained and installed once it becomes available from the equipment vendor, Ericsson.

5. Ericsson has only recently completed development of, and commenced production of, the software necessary to permit wireless carriers operating digital systems to process 911 calls from subscribers using TTY devices. As the Petitioners understand it, the necessary software was placed into commercial production by Ericsson on or after April 3, 2002 (See Attachment A hereto);² and small carriers (such as the Petitioners) are not a first priority

² Attachment A consists of an e-mail message from the Petitioners' Ericsson representative.

for equipment vendors when it comes to installing a new product. The waiver and extension of time requested herein will afford the Petitioners the time necessary for Ericsson to install and properly test the necessary software in the existing Ericsson MSC 5000 switch.

III) Necessity for Waiver

6. In its Fourth Report and Order (CC Docket No. 94-102), FCC 00-436, 15 FCC Rcd. 25216 (2000) ("Fourth R&O"), the Commission established June 30, 2002 as the date by which wireless carriers operating digital systems must be capable of transmitting 911 calls from individuals using TTY devices. Fourth R&O, Para. No. 8. Because circumstances dictate that the Petitioners will be unable to meet the June 30, 2002 deadline, they are obligated to request a waiver of the requirements of Section 20.18(c) of the Rules. Under Section 1.3 of the Rules, the Commission may waive the requirement for good cause shown.

7. Section 1.925(b)(3) of the Rules provides that the Commission may grant a waiver request if the applicant can show that "the underlying purpose of the rule(s) would not be served or would be frustrated by [its] application to the instant case, and that grant of the requested waiver would be in the public interest;" or that "in view of unique or unusual factual circumstances of the case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative."

8. In this case, the underlying purpose of Section 20.18(c)

of the Rules is to ensure that persons with hearing or speech disabilities using digital wireless systems can place 911 calls using TTY devices as rapidly as possible once the necessary technology becomes commercially available to the wireless carriers. The Petitioners share the Commission's goal, but have no reasonable alternative to requesting a waiver. In establishing the June 30, 2002 deadline, the Commission predicated its decision on representations from the equipment vendors "that network infrastructure manufacturers should have software generally available to all carriers by December 31, 2001." Fourth R&O, Para. No. 8. The Commission interpreted "the term 'generally available' as the date that the manufacturer announces as the release date for the upgraded software to all carriers for deployment." Fourth R&O, n. 15. However, subsequent events did not bear out the Commission's optimistic projections as to when the necessary software would be generally available. Perhaps this is not surprising, since the projection was made in a document released in December of 2000, i.e., a full year prior to December 31, 2001. As noted above, the Ericsson software did not become generally available until on or after April 3, 2002. Thus, the factual predicate upon which the Commission based the June 30, 2002 deadline stands rebutted by the facts of this case.

9. Grant of the requested waiver is also consistent with the public interest since no individual will be harmed if the limited waiver requested herein is granted. At present, digital TTY handsets are a new product and relatively scarce, virtually

eliminating the possibility that a significant portion of the public will be harmed in the short period of time the Petitioners need to complete the necessary TTY upgrades. While the Petitioners install and test their digital TTY solution, analog TTY devices will still work on SLO's system. Recognizing the benefit to the public, the Commission encouraged wireless carriers to continue making analog TTY service available. Fourth R&O, Para. No. 28. Grant of the requested waiver will allow the Petitioners to concentrate their limited resources on implementing a digital TTY solution at the earliest feasible date while continuing to offer the benefits of analog-based TTY service.

10. The underlying purpose of Section 20.18(c) of the Rules is to require "carriers to achieve TTY/digital compatibility at the earliest possible date;"³ and this purpose would be frustrated by application of the regulation's June 30, 2002 deadline in this case. As noted above, the Commission was presumably aware of the tenuous nature of establishing a date certain for digital TTY compliance when it originally promulgated Section 20.18(c) of the Rules, knowing full well that digital TTY technology did not exist at that time. Fourth R&O, Paras. 7 and 8. The Commission chose to establish a "date certain" for compliance to provide an incentive "for the industry to maintain TTY access as a priority." Fourth R&O, Para. 7. The Commission has long recognized that compliance deadlines should be linked to the availability of manufacturer equipment. See, e.g., Implementation of Section 17

³ Fourth R&O, Para. 29.

of the Cable Television Consumer Protection and Competition Act of 1992 -- Compatibility Between Cable Systems and Consumer Electronics Equipment, 9 FCC Rcd. 1981, Paras. 76-77 (!994) (modifying a proposed compliance deadline to account for unavailability of necessary equipment). In establishing the June 30, 2002 deadline, the Commission relied on manufacturers representations as to the anticipated availability of equipment by December 31, 2001. Fourth R&O, Para. 8. As demonstrated above, the Ericsson digital TTY software did not become generally available until approximately April 3, 2002. Accordingly, the June 30, 2002 deadline was developed under assumptions that proved to be incorrect with respect to timing. The Petitioners have been working diligently to upgrade the network to achieve digital TTY compatibility and, therefore, the underlying purpose of Section 20.18(c) of the Rules -- to ensure public safety for the hearing and speech impaired at the earliest possible date -- is being served.

11. Application of the June 30, 2002 deadline to the Petitioners would be highly inequitable because of the lack of timely availability of the necessary TTY software upgrade, a factor outside the Petitioners control. Availability is completely within the control of the manufacturers, not the Petitioners. As small customers of Ericsson, the Petitioners cannot reasonably command the attention of Ericsson. The Commission has long held that the unavailability of equipment necessary to meet a Commission compliance deadline warrants a waiver of such deadline. See, e.g.,

Roosevelt County Rural Telephone Cooperative, Inc., 13 FCC Rcd. 22, Paras. 29-36 (1997) (granting waivers of CIC conversion deadline where product needed to accomplish upgrade was "not readily available" from manufacturers); Telephone Number Portability, 13 FCC Rcd. 9564, 9568 (1998); Cuba City Telephone Exchange Company, 12 FCC Rcd. 21794, Paras. 16-25 (1997); CC&S Telco, Inc., 6 FCC Rcd. 349, Paras. 6 and 12 (1991).

12. Equally as significant, it would be unduly burdensome for the Petitioners to pursue any alternative digital TTY solution at this time. The Petitioners are essentially wedded to the Ericsson digital TTY software since the Petitioners rely upon Ericsson's proprietary switching and infrastructure products to run the systems. In addition, employing the products of another vendor would not enable the Petitioners to meet the June 30, 2002 deadline. This is so because the other major equipment vendors (e.g., Lucent, Nortel, etc.) have also experienced delays in the development of their TTY solutions; and there is no guarantee that any other equipment vendor could provide the Petitioners with the necessary equipment any sooner than Ericsson. Reliance upon Ericsson is the Petitioners only feasible TTY option. As soon as Ericsson delivers, installs and tests the TTY software, TTY compliance will have been achieved. Until such time, the Petitioners have no reasonable alternative to requesting the waiver.

WHEREFORE, good cause shown, the Petitioners request that the instant petition be granted.

Respectfully submitted,
SLO Cellular, Inc. d/b/a
Cellular one of San Luis
Obispo and Entertainment
Unlimited, Inc.

733 Marsh Street
Suite B
San Luis Obispo, CA 93401
Tel.: (805) 543-0100

By: 
David Pruett, Officer

Dated: 16-27-02

Refer all inquiries and correspondence to:
Robert M. Jackson
Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, N.W., Suite 300
Washington, D.C. 20037
Tel.: (202) 828-5515

From: P-O Selander (EUS) [P-O.Selander@am1.ericsson.se]
Sent: Tuesday, June 25, 2002 4:19 PM
To: Anderson, Chris
Subject: E911 TTY Network Support



CFD

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Hi Chris,

Here's the synopsis of the E911 TTY feature:

- **Software General Availability on December 5, 2001.**
- **Corrections for TTY-Silence and Positron Express incorporated into a new software version.**
- **Beta & Lab Testing completed for new Software on March 1, 2002.**
- **New Software available for Carrier testing March 4, 2002.**
- **New Software FOA scheduled with Cingular for March 12, 2002.**
- **New Software General Availability expected on April 3, 2002.**

All needed is the software. There is no hardware requirement on TTY and no need for changes to DT.

Take a look at the Feature Description for further, detailed, information.
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Thanks /// P-O
425-895-3255

(following up with Local Number Portability information soon)